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Page

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

DANIELLE TEUSCHER, an individual;  
and DANIELLE TEUSCHER, as mother  
and natural guardian of Z.F., a minor,

Plaintiffs,

v.

CCB-NWC LLC, a California limited  
liability company, d/b/a, NW  
CRYOBANK,

Defendant.

No. 2:19-CV-0204-TOR

STIPULATED PROTECTIVE  
ORDER

## I. PURPOSES & LIMITATIONS

This case involves personal and private information regarding donor conceived children, their parents, and their donor in the field of Assisted Reproductive Technology (“ART”) and, therefore, involves highly sensitive and personal issues regarding human reproduction, DNA information, and medical information. The Parties, therefore, respectfully ask the Court to adopt the terms of this joint motion and proposed stipulated Protective Order to govern discovery in this matter.

This Protective Order is intended to protect confidential and sensitive information and to ensure that such information is used solely and exclusively for the prosecution and defense of this action. The Parties acknowledge that this agreement is consistent with Fed. R. Civ. P. 26(c). This agreement is intended to make information available for use in Court, while prohibiting any use outside of these proceedings. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

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## II. DEFINITIONS

**Challenging Party:** a Party or Non-Party that challenges the designation of information or items under this Order.

**“CONFIDENTIAL” Material:** information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under the Federal Rules of Civil Procedure Rule 26(c), including but not limited to:

1. Information, produced by or obtained from a Party, that is related to the use of ART by, and reveals personally identifying information of, any of NW Cryobank’s customers (including Ms. Teuscher);
2. Information, produced by or obtained from a Party, that is related to a person’s conception through the use of ART (including Z.F.), and reveals personally identifying information of any such person;
3. Information, produced by or obtained from a Party, that personally identifies any of NW Cryobank’s gamete donors (including Donor # 2744) and/or the donor’s family;
4. Information, produced by or obtained from NW Cryobank, that is related to NW Cryobank’s and/or its parent’s/affiliates’ business practices, policies, or methodologies and that NW Cryobank has taken reasonable measures to keep confidential, so long as such information is not otherwise publicly

1 available or available from third parties who have no obligation to keep the  
2 information confidential.  
3

4 These categories of material are presumed confidential; however, this  
5 presumption neither relieves the Producing Party of its obligation to designate  
6 Protected Material nor does it prejudice a Party's ability to challenge the  
7 designation or file the material, subject to the procedures for filing protected  
8 material.  
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11 **Counsel (without qualifier):** Outside Counsel and House Counsel (as well  
12 as their support staff).  
13

14 **Designating Party:** a Party or Non-Party that designates information or  
15 items that it produces in disclosures or in responses to discovery as  
16 "CONFIDENTIAL."  
17

18 **Disclosure or Discovery Material:** all items and information, regardless of  
19 the medium or manner in which they are generated, stored, or maintained  
20 (including, among other things, testimony, transcripts, and tangible things) that are  
21 produced or generated in disclosures or responses to discovery in this matter.  
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23 **Expert:** a person with specialized knowledge or experience in a matter  
24 pertinent to the litigation who has been retained by a Party or its Counsel to serve  
25 as an expert witness or as a consultant in this action.  
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1           **House Counsel:** attorneys who are employees of a party to this action.

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3           House Counsel does not include Outside Counsel or any other outside counsel.

4           **Non-Party:** any natural person, partnership, corporation, association, or  
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6           other legal entity not named as a Party to this action.

7           **Outside Counsel:** attorneys who are not employees of a party to this action  
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9           but are retained to represent or advise a party to this action, and their support staff.

10           **Party:** any party to this action, including all of its officers, directors,  
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12           employees, consultants, retained experts, and Outside Counsel (and their support  
13           staffs).

14           **Producing Party:** a Party or Non-Party that produces Disclosure or  
15           Discovery Material in this action.

16           **Professional Vendors:** persons or entities that provide litigation support  
17  
18           services (e.g., photocopying, videotaping, translating, preparing exhibits or  
19           demonstrations, and organizing, storing, or retrieving data in any form or medium)  
20           and their employees and subcontractors.

21           **Protected Material:** any Disclosure or Discovery Material that is  
22  
23           designated as “CONFIDENTIAL.”

24           **Receiving Party:** a Party that receives Disclosure or Discovery Material  
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26           from a Producing Party.

### III. SCOPE

The protections conferred by this agreement cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this agreement do not cover (1) information that is in the public domain or becomes part of the public domain through trial or otherwise; and (2) information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

### IV. PROTECTED MATERIAL

#### A. BASIC PRINCIPLES

A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Protected Material may be disclosed only to the categories of persons and under the conditions described in this agreement. Protected Material must be stored and maintained by a

1 Receiving Party at a location and in a secure manner that ensures that access is  
2 limited to the persons authorized under this Order.  
3

4 **B. DESIGNATING PROTECTED MATERIAL**

5 Exercise of Restraint and Care in Designating Material for Protection. Each  
6 Party or Non-Party that designates information or items for protection under this  
7 Order must take care to limit any such designation to specific material that  
8 qualifies under the appropriate standards. To the extent practicable, the  
9 Designating Party must designate for protection only those parts of material,  
10 documents, items, or oral or written communications that qualify—so that other  
11 portions of the material, documents, items, or communications for which  
12 protection is not warranted are not swept unjustifiably within the ambit of this  
13 Order.  
14

15 Mass, indiscriminate, or routinized designations are prohibited.  
16 Designations that are shown to be clearly unjustified or that have been made for an  
17 improper purpose (e.g., to unnecessarily encumber or delay the case development  
18 process or to impose unnecessary expenses and burdens on other parties) expose  
19 the Designating Party to sanctions. Notwithstanding the foregoing, nothing in this  
20 Order shall enlarge or modify the grounds recognized by law for seeking sanctions  
21 against another Party, or impose burdens or obligations on any Party that are  
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1 inconsistent with, or not otherwise authorized by the Federal Rules of Civil  
2 Procedure, or any other applicable rule or case law.

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4 If it comes to a Designating Party's attention that information or items that it  
5 designated for protection do not qualify for protection, the Designating Party must  
6 promptly notify all other Parties that it is withdrawing the mistaken designation.  
7

8 Manner and Timing of Designations. Except as otherwise provided in this  
9 Order (*see, e.g.*, below procedures for documents or materials made available for  
10 inspection), or as otherwise stipulated or ordered, Disclosure or Discovery Material  
11 that qualifies for protection under this Order must be clearly so designated before  
12 the material is disclosed or produced.  
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15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic  
17 documents, but excluding transcripts of depositions or other pretrial or trial  
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to  
19 each page that contains Protected Material. If only a portion of the material on a  
20 page qualifies for protection, the Producing Party must clearly identify the  
21 protected portions (e.g., by making appropriate markings in the margins).  
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24 A Party or Non-Party that makes original documents or materials available  
25 for inspection need not designate them for protection until after the inspecting  
26 Party has indicated which material it would like copied and produced. During the  
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1 inspection and before the designation, all of the materials made available for  
2 inspection shall only be available to Counsel in this case. After the inspecting  
3 Party has identified the documents it wants copied and produced, the Producing  
4 Party must determine which documents, or portions thereof, qualify for protection  
5 under this Order. Then, before producing the specified documents, the Producing  
6 Party must affix the “CONFIDENTIAL” legend to each page that contains  
7 Protected Material. If only a portion or portions of the material on a page qualifies  
8 for protection, the Producing Party also must clearly identify the protected  
9 portion(s) (e.g., by making appropriate markings in the margins).  
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14 (b) for testimony given in depositions or in other pretrial proceedings,  
15 that the Designating Party identify on the record during the deposition, hearing, or  
16 other proceeding, all protected testimony. When it is impractical to identify  
17 separately each portion of testimony that is entitled to protection and it appears that  
18 substantial portions of the testimony may qualify for protection, the Designating  
19 Party may invoke on the record (before the deposition, hearing, or other  
20 proceeding is concluded) a right to have up to 30 days from receipt of the transcript  
21 to identify the specific portions of the testimony as to which protection is sought  
22 and to specify the level of protection being asserted. Only those portions of the  
23 testimony that are appropriately designated for protection within those 30 days  
24 shall be covered by the provisions of this Order. Alternatively, a Designating Party  
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1 may specify, at the deposition or up to 30 days from receipt of the transcript, if that  
2 period is properly invoked, that the entire transcript shall be treated as  
3 “CONFIDENTIAL.”  
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5 Transcripts containing Protected Material shall have an obvious legend on  
6 the title page that the transcript contains Protected Material, and the title page shall  
7 be followed by a list of all pages (including line numbers as appropriate) that have  
8 been designated as Protected Material. The Designating Party shall inform the  
9 court reporter of these requirements. Any transcript that is prepared before the  
10 expiration of the 30-day period for designation shall only be available to Counsel  
11 in this case.  
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15 (c) for information produced in some form other than documentary  
16 and for any other tangible items, that the Producing Party affix in a prominent  
17 place on the exterior of the container or containers in which the information or  
18 item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the  
19 information or item warrant protection, the Producing Party, to the extent  
20 practicable, shall identify the protected portion(s).  
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23 Inadvertent Failure to Designate. If corrected within a reasonable period of  
24 time, an inadvertent failure to designate qualified information or items does not,  
25 standing alone, waive the Designating Party’s right to secure protection under this  
26 Order for such material. Upon timely correction of a designation, the Receiving  
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1 Party must take reasonable efforts to assure that the material is treated in  
2  
3 accordance with the provisions of this Order.

4 **C. CHALLENGING PROTECTED MATERIAL**

5 Timing of Challenges. Any Party may make a good-faith challenge to a  
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7 designation of confidentiality at any time. Unless a prompt challenge to a  
8 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
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10 substantial unfairness, unnecessary economic burdens, or a significant disruption  
11 or delay of the litigation, a Party does not waive its right to challenge a  
12 confidentiality designation by electing not to mount a challenge promptly after the  
13 original designation is disclosed.  
14

15 Meet and confer required. In accordance with Local Rule 37, a Challenging  
16 Party shall initiate a meet-and-confer process in order to begin a challenge to a  
17 confidentiality designation. At a minimum, the Challenging Party shall identify, in  
18 writing, all portions of designated Protected Material for which it is challenging the  
19 confidentiality designation. The Designating Party shall make a good faith effort  
20 to provide the Challenging Party with the reasons for its designations. If the  
21 Designating Party does not put forward the reasons supporting its designations, in  
22 writing, within 8 business days of the Challenging Party's identification of the  
23 Protected Material for which it seeks to challenge the designation, then the  
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1 designation shall be considered waived and the material shall no longer be  
2 considered Protected Material under this Order.

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4       Once the Designating Party has put forward the reasons supporting its  
5 designations, the Parties shall, within 5 business days, confer by phone or email in  
6 a good faith attempt to resolve the dispute. If the Parties cannot resolve the dispute  
7 during the meet-and-confer, the Parties will make reasonable, good faith efforts to  
8 agree to ask the Court for an informal discovery conference to resolve the dispute.  
9 Unless a Party, or both Parties, believe that an informal discovery conference  
10 cannot or should not resolve the dispute (as provided below), the Designating Party  
11 shall contact the Court within 14 business days of the unsuccessful meet-and-  
12 confer (via an email cc'ed to Counsel of record for each Party) to arrange for an  
13 informal discovery conference. Except in situations where a Party, or both Parties,  
14 believe that an informal discovery conference cannot or should not resolve the  
15 dispute (as provided below), if the Designating Party does not contact the Court to  
16 arrange for an informal discovery conference within 14 business days of an  
17 unsuccessful meet-and-confer, the designation of the material at issue shall be  
18 considered waived by the Designating Party and the material shall no longer be  
19 considered Protected Material under this Order.

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21       If one of the Parties believes that an informal discovery conference cannot or  
22 should not be used to resolve the dispute because of the dispute's sensitive or  
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1 complicated nature, that Party must explain that position to the other Party in  
2 writing within 5 business days of the unsuccessful meet-and-confer. If both Parties  
3 agree that an informal discovery conference cannot or should not be used to  
4 resolve the dispute, the Challenging Party must confirm that position in writing  
5 within 5 business days of the unsuccessful meet-and-confer. If either (1) one Party  
6 believes an informal discovery conference cannot or should not be used to resolve  
7 the dispute and provides the reason for that in writing within 5 business days of the  
8 unsuccessful meet-and-confer, or (2) both Parties agree that an informal discovery  
9 conference cannot or should not be used to resolve the matter and the Challenging  
10 Party provides confirmation of the Parties' positions in writing within 5 business  
11 days of the unsuccessful meet-and-confer, the Designating Party must move for a  
12 protective order within 14 business days of receipt of the written notice that a Party  
13 or the Parties do(es) not consent to an informal discovery conference. Except in  
14 cases where an informal discovery conference is used (as discussed above), if the  
15 Designating Party does not file a motion for a protective order within 14 business  
16 days of receipt of a Party's written notice that the Party or both Parties will not  
17 agree to use an informal discovery conference, the designation of the material at  
18 issue shall be considered waived by the Designating Party and the material shall no  
19 longer be considered Protected Material under this Order.  
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1 The burden of persuasion on any such motion shall be on the Designating  
2 Party. Frivolous challenges, and those made for an improper purpose (e.g., to  
3 harass or impose unnecessary expenses and burdens on other parties) may expose  
4 the Challenging Party to sanctions. Unless the Designating Party has waived or  
5 withdrawn the confidentiality designations, all Parties shall continue to afford the  
6 material in question the level of protection to which it is entitled under the  
7 Producing Party's designation until the Court rules on the challenge.  
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11 **E. DISCLOSURE OF CONFIDENTIAL MATERIAL**

12 Unless otherwise ordered by the Court or permitted in writing by the  
13 Designating Party, a Receiving Party may disclose any material designated  
14 CONFIDENTIAL only to:  
15

16 1. the Receiving Party's Counsel in this action, including any Outside  
17 Counsel, regardless of whether Outside Counsel has appeared, as well as  
18 employees of Counsel or Outside Counsel to whom it is reasonably necessary to  
19 disclose the information for this litigation, provided that at least one partner,  
20 shareholder, or other managing lawyer from each firm has signed the  
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A) and provided a  
22 signed copy of the same to all Parties;  
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25 2. The officers, directors, and employees (including in agency or House  
26 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for  
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1 this litigation and who have signed the “Acknowledgement and Agreement to Be  
2 Bound” (Exhibit A);

3  
4 3. Experts and consultants to whom disclosure is reasonably necessary  
5 for this litigation and who have signed the “Acknowledgment and Agreement to  
6 Be Bound” (Exhibit A);

7  
8 4. Witnesses, during their depositions, to whom disclosure is reasonably  
9 necessary and who have signed the “Acknowledgment and Agreement to Be  
10 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
11 by the Court. Pages of transcribed deposition testimony or exhibits to depositions  
12 that reveal Protected Material may not be disclosed to anyone except as permitted  
13 under this Protective Order;

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16 5. The author or recipient of a document containing the information or a  
17 custodian or other person who otherwise possessed or knew the information;

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19 6. The Court and its personnel, and court reporters and their staff;

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21 7. Professional jury or trial consultants, mock jurors, and Professional  
22 Vendors to whom disclosure is reasonably necessary for this litigation and who  
23 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

24 **F. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**  
25 **IN THIS LITIGATION**

26 The terms of this Order are applicable to information produced by a Non-  
27 Party in this action and designated as “CONFIDENTIAL.” Such information  
28

1 produced by Non-Parties in connection with this litigation is protected by the  
2 remedies and relief provided by this Order. Nothing in these provisions should be  
3 construed as prohibiting a Non-Party from seeking additional protections.  
4

5 In the event that a Party is required, by a valid discovery request, to produce  
6 a Non-Party's Protected Material in its possession, and the Party is subject to an  
7 agreement with the Non-Party not to produce the Non-Party's confidential  
8 information, then the Party shall:  
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11 (1) promptly notify in writing the Requesting Party and the Non-  
12 Party that some or all of the information requested is subject to a confidentiality  
13 agreement with a Non-Party;  
14

15 (2) promptly provide the Non-Party with a copy of this Order, the  
16 relevant discovery request(s), and a reasonably specific description of the  
17 information requested; and  
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19 (3) make the information requested available for inspection by the  
20 Non-Party.  
21

22 If the Non-Party does not seek a protective order from this Court within 14  
23 days of receiving the notice and accompanying information, the Producing Party  
24 shall produce the Non-Party's Protected Material responsive to the discovery  
25 request assuming the Producing Party has complied with all duties and obligations  
26 owed to the Non-Party with respect to maintaining the confidentiality of the Non-  
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1 Party information in its possession. If the Non-Party timely seeks a protective  
2 order, the Producing Party shall not produce any information in its possession or  
3 control that is subject to the confidentiality agreement with the Non-Party before a  
4 determination by the Court. Absent a court order to the contrary, the Non-Party  
5 shall bear the burden and expense of seeking protection in this Court of its  
6 Protected Material.  
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8  
9 **G. FILING CONFIDENTIAL MATERIAL**

10  
11 The Parties acknowledge that this Protective Order does not affect any  
12 Party's ability to file documents with the Court. Questions regarding filing under  
13 seal shall be left to the Court's judgment and discretion. Protected Material may  
14 only be filed under seal pursuant to a court order authorizing the sealing of the  
15 specific Protected Material at issue. The fact that a document has been designated  
16 as Protected Material under this Order is insufficient to justify filing under seal.  
17

18  
19 **VI. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL**  
20 **INFORMATION**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has  
22 disclosed Protected Material to any person or in any circumstance not authorized  
23 under this Order, the Receiving Party must immediately (a) notify, in writing, all  
24 other Parties, (b) use its best efforts to retrieve all unauthorized copies of the  
25 Protected Material, (c) inform the person or persons to whom unauthorized  
26 disclosures were made of all the terms of this Order, (d) request that such person or  
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1 persons execute the “Acknowledgment and Agreement to Be Bound” that is  
2 attached hereto as Exhibit A; and (e) delete or destroy the disclosed information in  
3 their possession, including any copies of the Protected Material it retrieves from  
4 the person not authorized to have received the material.  
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## 7 **VII. NON-TERMINATION AND RETURN OF DOCUMENTS**

8 Within 60 days of the termination of this action, including all appeals, each  
9 Receiving Party must destroy all Protected Material and provide confirmation to  
10 the Producing Party that all Protected Material has been destroyed.  
11 Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
12 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
13 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
14 work product, and consultant and expert work product, even if such materials  
15 contain Protected Material. Any such archival copies that contain or constitute  
16 Protected Material remain subject to this Protective Order.  
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20 The confidentiality obligations imposed by this agreement shall remain in  
21 effect until a Designating Party agrees otherwise in writing or a court orders  
22 otherwise.  
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2 RESPECTFULLY SUBMITTED & STIPULATED, this 8<sup>th</sup> day of July,  
3 2020.

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**WITHERSPOON KELLEY**

/s/ Matthew W. Daley

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**EXHIBIT A**

**AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby acknowledge that I have received a copy of the Stipulated Protective Order in the matter of *Teuscher, et al. v. CCB-NWC, LLC*, in United States District Court for the Eastern District of Washington, No. 19-cv-00204-TOR. I have read and agree to be bound by all of the provisions of the Stipulated Protective Order. I agree (a) not to divulge any Protected Information or materials to any person other than those identified in the Stipulated Protective Order; and (b) not to use any Protected Information or materials for any purpose other than this litigation. In addition, I consent to the jurisdiction and contempt power of the United States District Court for the Eastern District of Washington with respect to the enforcement of the Stipulated Protective Order.

DATED: \_\_\_\_\_

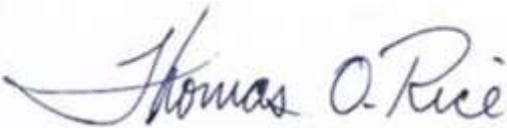
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

1 PURSUANT TO THE PARTIES' JOINT MOTION AND THE TERMS OF  
2 THIS STIPULATED PROTECTIVE ORDER, THE COURT HEREBY  
3 APPROVES AND ADOPTES THIS PROTECTIVE ORDER AS AN ORDER OF  
4 THE COURT.  
5  
6

7 DATED July 13, 2020.  
8



  
THOMAS O. RICE  
Chief United States District Judge